IN THE HIGH COURT OF JUDICATURE AT PATNA
CWJC No.11665 of 2006
RAMESHWAR YADAV & ANR
Versus
THE BIHAR STATE ELECTRICITY BOARD & ORS.
With
CWJC No.11686 of 2006
KAUSHAL KISHORE SINHA
Versus
THE BIHAR STATE ELECTRICITY BOARD & ORS.
With
CWJC No.7641 of 2007
YOGENDRA PRASAD & ANR
Versus
THE BIHAR STATE ELECTRICITY BOARD & ORS.
With
CWJC No.7696 of 2007
RAMESHWAR YADAV
Versus
THE BIHAR STATE ELECTRICITY BOARD & ORS.

07- 21.4.2010 Heard Mr. Shashi Anugrah Narain, learned Senior Counsel for the petitioners, and Mr. Dharmeshwar Mishra for the respondents.

WEB COPY NOT OFFICIAL

2. The four writ petitions have been preferred by the employees of the Bihar State Electricity Board (hereinafter referred to as the 'Board'), who claim to be 'Worker' within the meaning of section 2(l) of the Factories Act, 1948 (hereinafter referred to as the 'Act'). They claim payment of extra wages for overtime hours for the period July 1996, to December 2004, in terms of section 59 of the Act.

3. The basic facts shall be drawn from C.W.J.C. No.11665 of 2006. The two petitioners claimed extra wages

for overtime which were denied to them, leading to C.W.J.C. No.1334 of 2005. The same was disposed of by a learned Single Judge of this Court by order dated 11.5.2005 (Annexure-1), whereby the respondent authorities named therein were directed to consider the grievances of the petitioners. The Board passed the order dated 11.2.2006 (Annexure-6), whereby extra wages for overtime for a total period of 656 hours during the period in question has been permitted to be paid to petitioner no.1, in a situation where he claims to have worked for 2792 hours. The case of petitioner no.2 has been disposed of by order dated 11.2.2006 (Annexure-7), whereby he has been allowed payment of extra wages for overtime of 991 hours in a situation where he claims to have worked for 6233 hours.

WEB COPY NOT OFFICIAL

4. Learned counsel for the petitioners submits that, in view of the provisions of section 59 of the Act, the respondent authorities are bound to make payment of extra wages for overtime. In view of the admitted position of the parties, in his submission, the Board has to pay extra wages for overtime for the total number of hours actually put in, rather than the reduced number of hours determined by the Board. He has relied on a number of orders of a learned

Single Judge of the Jharkhand High Court, of this Court, as well as Division Benches of this Court.

5. Learned counsel for the respondents submits that payment has been made to the petitioners and similarly circumstanced employees as per its circular dated 19.1.1995 (Annexure-11), which restricts payment of extra wages for overtime. The same was reiterated in a bipartite agreement at the meeting held on 11.6.2004 (Annexure-8). In his submission, therefore, the Board has been paying extra wages for overtime strictly as per the circular dated 19.1.1995, and the bipartite settlement dated 11.6.2004.

WEB COPY NOT OFFICIAL

6. One such writ petition raised identical issues, which was disposed of by order dated 23.9.2008 (Annexure-17), passed in C.W.J.C. No.2827 of 2007, and analogous writ petition. Learned counsel for the petitioners relied on the same and seeks identical direction. The following observation of the learned Single Judge in that order needs serious consideration:

> "The Board is a State under Article 12 of the Constitution of India. The Court would have expected the Board to act with fairness and not litigate in the manner of a private litigant. At best there shall be an issue if the petitioner has actually worked or not beyond stipulated hours. If the respondents have taken work from him beyond the stipulated hours, the petitioner cannot

> suffer. It is those who took work from him beyond the stipulated hours in the higher echelons who shall have to bear the burden of the overtime allowance for the period beyond that as prescribed."

7. We are mindful of the position that the provision of section 59 of the Act does mandate payment of extra wages for overtime. This predicates a situation that the worker has genuinely worked overtime, and has not forcibly worked, or has created a situation where he forced the authorities to allow him to work extra hours of overtime, beyond the scheduled hours of working. Section 59 of the Act cannot be permitted to be used as a contrivance for illegal gains actuated by force, duress, misrepresentation, and the like. It is common knowledge that the provisions for payment of extra wages for overtime including section 59 of the Act are being misused. The worker entitled to the benefit of extra wages for overtime while away their time or remain absent during the scheduled duty hours, thereby forcing a situation for overtime.

WEB COPY NOT OFFICIAL

8. While sitting in the placid atmosphere of the court room it is very easy for us to observe that disciplinary proceedings ought to have been initiated. More often than not, it is practically not possible to counteract the militate posture of the worker, and the authorities perhaps have to succumb to

such aggressive behaviour of the worker and union for the sake of his personal self-respect and dignity, and to avoid humiliation, a situation surely cannot be countenanced by the Court.

9. I have no manner of doubt in my mind that section 59 of the Act, or any like provision to be found elsewhere, cannot be permitted to be perverted into a contrivance for false or artificial claims. The view taken by the learned Single Judge and extracted hereinabove, appears to us to be ignoring an important reality of the circumstances prevailing in India. It was this aspect of the matter which was taken into account by the Board while issuing its circular dated 19.1.1995, and the bipartite settlement dated 11.6.2004. The same has not been considered in any of the orders cited on behalf of the petitioners.

WEB COPY NOT OFFICIAL

10. None of the orders cited at the Bar really constitute binding precedent within the meaning of the law of precedents, being short orders without considering the matter comprehensively. Surely views favourable to the petitioners have been expressed in those orders with which I tend to disagree for the reasons indicated hereinabove. I, therefore, deem it fit and proper that the matter may be considered by a

Division Bench for an authoritative pronouncement. One of the decisions cited before me has been rendered by a Division Bench and, therefore, it may require consideration whether or not it has to be referred to a still larger Bench.

11. Put up before the Hon'ble the Chief Justice for appropriate orders.

(S K Katriar, J.)

S.K.Pathak/

WEB COPY NOT OFFICIAL